

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY MM Docket No. 92-283

In the Matter of

Amendment of Section 73.202(b), RM-8122
Table of Allotments,
FM Broadcast Stations.
(Hope and Fordyce, Arkansas)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: March 12, 1993; Released: April 8, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making* ("Notice"). 7 FCC Rcd 7993 (1992), issued in response to a petition for rule making filed on behalf of KdB, Inc. ("petitioner"), licensee of Station KXAR-FM, Channel 269A, Hope, Arkansas, proposing the substitution of Channel 269C2 for Channel 269A, and modification of its license accordingly. To accommodate its proposal, petitioner also requested the substitution of Channel 272A for Channel 269A at Fordyce, Arkansas, and modification of the license issued to Dallas Properties, Inc. ("Dallas"), for Station KQEW(FM). Petitioner filed supporting comments reiterating its intention to apply for Channel 269C2 if allotted to Hope, as requested. Dallas filed informal comments in opposition to the rule making proposal insofar as it seeks to modify its license to specify another Class A channel at Fordyce.¹ Ouachita Communications, Inc. ("Ouachita")² also filed comments. Dallas filed reply comments. No other comments were received.

2. In its comments petitioner reaffirms its interest in the Channel 269C2 upgrade at Hope and the modification of its license for Station KXAR-FM. Moreover, petitioner reiterates its willingness to reimburse Dallas for its reasonable costs associated with the channel change for Station KQEW(FM) at Fordyce.

¹ These comments were not filed in accordance with the requirements of Section 1.420(c) of the Commission's Rules and paragraph 4 of the Appendix to the *Notice of Proposed Rule Making* since they were not served on the petitioner. Nevertheless, we have reviewed the comments and find that they fail to demonstrate that Station KQEW(FM) would be harmed by the modification of its license to specify operation on another Class A channel. Therefore, we will not consider these comments further in this proceeding, although we will consider Dallas' reply comments.

² Ouachita is the licensee of Station KENA-FM, Channel 269A, Mena, Arkansas.

³ As stated in the *Notice*, although the proposal for Channel 269C2 at Hope conflicts with the presently licensed operation of Station KENA-FM on Channel 269A at Mena, Arkansas, at

3. Ouachita's comments interpose no objection to the petitioner's modification proposal at Hope, but urge that the upgrade of Station KXAR-FM be conditioned on approval of its modification application for Station KENA-FM at Mena, Arkansas.³

4. Dallas' reply comments acknowledge that the costs to be incurred in connection with the frequency change for Station KQEW(FM) will be governed by established Commission policy and only in the event of a disagreement will the Commission intercede in a dispute, citing *Gouverneur and Ogdensburg, New York*, 45 RR 2d 763 (1979). Dallas states that since the petitioner has agreed to reimburse the licensee of Station KQEW(FM) for its reasonable costs, it is giving notification now of its anticipated costs associated with the modification of Station KQEW(FM), appending a list of contemplated expenses to its comments.

5. We believe the public interest would be served by substituting Channel 269C2 for Channel 269A at Hope, and by substituting Channel 272A for Channel 269A at Fordyce, since it could enable Station KXAR-FM to provide an enhanced coverage FM service to the community. Additionally, Station KQEW(FM) will be afforded an opportunity to operate at maximum Class A facilities, a benefit not presently available to that community, and thereby increase its coverage area in Fordyce. Therefore, we will modify the license of Station KXAR-FM to specify operation on Channel 269C2. Channel 272A can be used by Station KQEW(FM) at its present location. Therefore, we are modifying herein the license of Station KQEW(FM) to specify operation on Channel 272A in lieu of Channel 269A at Fordyce, as proposed in the *Notice*. Petitioner has restated its intention to reimburse Station KQEW(FM). Fordyce, for the reasonable costs associated with modifying the station from Channel 269A to Channel 272A.

6. Pursuant to Commission policy, reimbursement to Station KQEW(FM) for the reasonable costs of changing its frequency will be governed by *Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967). We expect the parties to negotiate in good faith, subject to Commission review only in the event of disagreement. See *Mayfield and Wickliff, Kentucky*, 48 RR 2d 1232 (1981).⁴

7. As indicated in the *Notice*, Channel 269C2 can be substituted for Channel 269A at the petitioner's suggested site, located 2.6 kilometers (1.6 miles) west of the community,⁵ in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. Channel 272A can be substituted for Channel 269A at Fordyce at the authorized site for Station KQEW(FM).⁶

coordinates 34-34-23 and 94-14-55, Station KENA-FM has been modified to specify operation on Channel 271C2 in MM Docket No. 89-290. See 7 FCC Rcd 5493 (1992).

⁴ Therefore, we offer no determination regarding Dallas' list of anticipated expenses at this time.

⁵ Coordinates used for Channel 269C2 at Hope are 33-40-15 and 93-37-10. As indicated earlier, since the Hope proposal is short-spaced to the presently licensed operation of Station KENA-FM on Channel 269A at Mena, Arkansas, the issuance of a license for Station KXAR-FM on Channel 269C2 at Hope may be withheld until Station KENA-FM is authorized to operate on Channel 271C2 at Mena. We will serve a copy of this *Report and Order* on the licensee of Station KENA-FM.

⁶ Coordinates at the licensed site of Station KQEW(FM) are 33-48-17 and 92-26-07.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 24, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Hope, Arkansas	269C2, 285A
Fordyce, Arkansas	272A

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KdB, Inc. (File No. BLH-850117KY) for Station KXAR-FM, Hope, Arkansas, IS MODIFIED to specify operation on Channel 269C2 in lieu of Channel 269A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Dallas Properties, Inc. (File No. BLH-820323AA) for Station KOEW(FM), Fordyce, Arkansas, IS MODIFIED to specify operation on Channel 272A in lieu of Channel 269A, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KOEW's license (File No. BLH-820323AA), except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license File No. BLH-820323AA, except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, KdB, Inc., licensee

of Station KXAR-FM, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the upgrade.

12. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensee of Station KOEW(FM) as follows: Dallas Properties, Inc., 303 Spring Street, Fordyce, Arkansas 71742, and to Ouachita Communications, Inc., Radio Station KENA-FM, 1207 Texas, Mena, Arkansas 71953.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau